



February 19, 2020

VIA EMAIL

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, DC 20220
treasfoia@treasury.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

According to press reports, allies of the Trump administration have used numerous back channels to advance personal interests during recent upheaval in Venezuela. For example, former Rep. Pete Sessions and President Trump's personal lawyer Rudy Giuliani reportedly participated in a phone call with Venezuela's leader Nicolas Maduro in September 2018, which followed a trip of Sessions' to Caracas the previous spring that had been at least partly coordinated with the State Department.¹ Their interests reportedly aligned with U.S. energy interests in Venezuela, including those of Harry Sargeant III and Lev Parnas—both implicated as well in the matters at the core of President Trump's impeachment.²

Giuliani has also lobbied the Department of Justice on behalf of Venezuelan energy executive Alejandro Betancourt Lopez, arguing that he should not be charged in a money-laundering case—in fact staying at Betancourt's estate in Madrid on the same trip in August 2019 when he met with Ukrainian official Andriy Yermak to pressure Ukraine to investigate a political opponent of the President.³

¹ Rosalind Helderman et al., *Trump's Lawyer and the Venezuelan President: How Giuliani Got Involved in Back-Channel Talks With Maduro*, WASH. POST (Dec. 30, 2019, 7:38 AM), https://www.washingtonpost.com/politics/trumps-lawyer-and-the-venezuelan-president-how-giuliani-got-involved-in-back-channel-talks-with-maduro/2019/12/29/289dc6aa-235f-11ea-86f3-3b5019d451db_story.html.

² *Id.*

³ Rosalind Helderman et al., *A Wealthy Venezuelan Hosted Giuliani As He Pursued Ukraine Campaign. Then Giuliani Lobbied the Justice Department on his Behalf.*, WASH. POST (Nov. 26, 2019, 11:40 AM), <https://www.washingtonpost.com/politics/a-wealthy-venezuelan-hosted-giuliani-as-he-pursued-ukraine-campaign-then-giuliani-lobbied-the-justice->



In what appears to be a separate back channel effort, private security executive Erik Prince has also been engaging with Venezuelan leadership, according to press reports. Prince reportedly informed the White House ahead of a planned trip to Venezuela.⁴ U.S. Special Representative for Venezuela Elliott Abrams has stated that any talks of Giuliani and Prince with Venezuelan leadership were not official U.S. Government business.⁵

American Oversight seeks records to shed light on whether and to what extent personal interests are influencing U.S. policy towards Venezuela.

Requested Records

American Oversight requests that your agency produce the following records within twenty business days:

All records regarding Erik Prince's trip to Venezuela in or around November 2019, including all communications related to the trip, any material regarding agenda items for the trip, logistical arrangements, readouts exchanged following the trip, or documents regarding a referral for possible sanctions violations tied to the trip.

American Oversight assesses that Treasury is best positioned to determine where responsive records may reside. Public reporting indicates both that Prince notified Treasury regarding his trip and that Treasury received information related to the trip regarding possible sanctions violations.⁶

Therefore, a search for responsive records should include any offices normally involved in coordinating travel of senior government officials and handling

[department-on-his-behalf/2019/11/26/272105a2-0ec5-11ea-b0fc-62cc38411ebb_story.html](https://www.reuters.com/article/us-venezuela-politics-guaido-giuliani/exclusive-giuliani-told-u-s-his-client-deserves-leniency-for-financing-venezuelas-opposition-parnas-idUSKBN1ZL1AR); see also Aram Roston, et al., *Exclusive: Giuliani Told U.S. His Client Deserves Leniency for Financing Venezuela's Opposition* – Parnas, REUTERS (Jan. 22, 2020, 6:03 AM), <https://www.reuters.com/article/us-venezuela-politics-guaido-giuliani/exclusive-giuliani-told-u-s-his-client-deserves-leniency-for-financing-venezuelas-opposition-parnas-idUSKBN1ZL1AR>.

⁴ Aram Roston, et al., *Blackwater Founder Erik Prince Held Secret Talks with Top Venezuelan Official: Sources*, REUTERS (Dec. 13, 2019, 3:24 PM), <https://www.reuters.com/article/us-venezuela-politics-erikprince/blackwater-founder-erik-prince-held-secret-talks-with-top-venezuelan-official-sources-idUSKBN1YH2BY>.

⁵ Michael Wilner & Alex Daugherty, *State Department Says Giuliani Was Freelancing in Venezuela*, MIAMI HERALD (Jan. 7, 2020, 5:15 PM), <https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article239048113.html>.

⁶ Joshua Goodman, *AP Exclusive: Trump Ally May Have Broken Venezuela Sanctions*, AP NEWS, Dec. 30, 2019, <https://apnews.com/0641c2b37886a08240d0ba64c9319699>.

referrals of sanctions violations. In addition, at a minimum, American Oversight requests that Treasury search the immediate Office of the Secretary, the immediate office of anyone serving in the capacity of White House Liaison, the immediate Office of General Counsel, the immediate Office of the Assistant Secretary for Terrorism and Financial Intelligence, and the immediate Office of Foreign Asset Control.

Please provide all responsive records from September 1, 2019, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."⁷ The subject matter of the requested records specifically relates to the operations or activities of the government, including the role of the president's personal attorney and private security interests in back-channel diplomacy. There is significant public interest in understanding whether and to what extent private interests are influencing U.S. foreign policy. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁸ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁹

⁷ 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ American Oversight currently has approximately 15,400 page likes on Facebook and 101,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 13, 2020); American

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.¹⁰ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;¹¹ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹² posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;¹⁴ and posting records and analysis regarding the Department of Justice’s decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President’s political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁵

Accordingly, American Oversight qualifies for a fee waiver.

Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 13, 2020).

¹⁰ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹¹ *DOJ Records Relating to Solicitor General Noel Francisco’s Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹² *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹³ *Documents Reveal Ben Carson Jr.’s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁴ *Investigating the Trump Administration’s Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹⁵ *Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁶ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files

¹⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁷

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁸ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁸ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Melanie Sloan
Senior Advisor
American Oversight